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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,306	10/27/2000	James F. McGuckin JR.	10546/53003	4213

30636 7590 02/13/2003

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EXAMINER

DAWSON, GLENN K

ART UNIT PAPER NUMBER

3761

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/697,306

Applicant(s)

MCGUCKIN, JAMES F.

Examiner

Glenn K Dawson

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 17 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

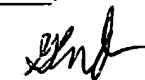
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 36-51.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_



Glenn K Dawson  
Primary Examiner  
Art Unit: 3761

Continuation of 2. NOTE: Claim 36 now claims a flexible member between the capsule to the handle; claim 44 now claims a flexible grasping mechanism through the sheath; claim 49 now claims that the endoscope bends to conform to the configuration of the body lumen.

Continuation of 5. does NOT place the application in condition for allowance because: The arguments as to the allowability of the claims based on the present amendment are moot since the amendment has not been entered. With respect to Tsuruta, the examiner did not state that the entire device could be placed in a body lumen, but rather that the capsule component could be placed in a body lumen (which could be rectum-colon; oral cavity-esophagus; nasal cavity-sinus). However, as pointed out in the last office action col. 34 lines 6-13 disclose that the device can be made flexible, i.e. bendable. The term "flexible" is indeed a relative term in that even applicant's device is more rigid than other structures- however, this fact does not make the applicant's device intrinsically "rigid". Great latitude is given in regards to relative terms and whether the prior art reads on these limitations. Neither Tsuruta or Sauer teach away from use with a flexible endoscope as has been previously pointed out by the examiner in that Tsuruta can be flexible and because a flexible endoscope can be used through more rigid instruments, as the endoscope can be advanced beyond the distal tip of the instrument and bent if so desired. Or the flexible endoscope may be used instead of a "rigid" one to enable the easier threading of the endoscope through the proximal end of the instrument.